

PAY SYSTEM FOR PREVAILING RATE EMPLOYEES

DECEMBER 15, 1970.—Ordered to be printed

Mr. DULSKI, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 17809]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 17809) to provide an equitable system for fixing and adjusting the rates of pay for prevailing rate employees of the Government, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That (a) subchapter IV of chapter 53 of title 5, United States Code, is amended to read as follows.

"SUBCHAPTER IV—PREVAILING RATE SYSTEMS

"§ 5341. Policy

"It is the policy of Congress that rates of pay of prevailing rate employees be uniformly fixed and adjusted and be based on principles that—

"(1) there will be equal pay for substantially equal work for all employees who are working under similar conditions of employment in all agencies within the same wage area;

"(2) there will be relative differences in pay within a wage area when there are substantial or recognizable differences in duties, responsibilities, and qualification requirements among positions;

"(3) the level of rates of pay will be maintained in line with prevailing levels of comparable work within a wage area; and

"(4) the level of rates of pay will be maintained so as to attract and retain qualified employees.

“§ 5342. Definitions; application

“(a) For the purpose of this subchapter—

“(1) ‘agency’ has the meaning given it by section 5102 of this title;

“(2) ‘prevailing rate employee’ means—

“(A) an individual employed in or under an agency in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement;

“(B) an employee in the Bureau of Engraving and Printing whose duties are to perform or direct manual or machine operations requiring special skill or experience, or to perform or direct the counting, examining, sorting, or other verification of the product of manual or machine operations;

“(C) an employee of a nonappropriated fund instrumentality described by section 2105(c) of this title who is employed in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement; and

“(D) an employee of the Veterans’ Canteen Service, Veterans’ Administration, excepted from chapter 51 of this title by section 5102(c)(14) of this title; and

“(3) ‘position’ means the work, consisting of duties and responsibilities, assignable to a prevailing rate employee.

“(b) This subchapter applies to all prevailing rate employees and positions in or under an agency. All such employees employed within the United States shall be bona fide residents of the United States, unless the Secretary of Labor certifies that no bona fide resident of the United States is available to fill the particular position. This subchapter does not apply to employees and positions described by section 5102(c) of this title other than by paragraphs (7), (8), and (14) of that section.

“§ 5343. Prevailing rate determinations; wage schedules

“(a) The pay of prevailing rate employees shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates. Subject to section 213(f) of title 29, the rates may not be less than the appropriate rates provided by section 206(a)(1) of title 29. To carry out this subsection—

“(1) the Civil Service Commission shall define the boundaries of individual local wage areas and designate a lead agency for each local wage area;

“(2) a lead agency, on order of the Commission, shall conduct a wage survey within the local wage area, collect and analyze wage survey data, and develop and establish wage schedules; and

“(3) the head of each agency having prevailing rate employees in a local wage area shall fix and adjust the rates of such employees in that area in accordance with the wage schedules established by the lead agency in that area.

“(b) The Commission shall order full-scale wage surveys every second year with interim surveys in alternating years. The Commission may order more frequent surveys when conditions so suggest.

"(c) The Commission, by regulation, shall prescribe practices and procedures for conducting wage surveys, analyzing wage survey data, and developing and establishing wage schedules. The regulations shall provide—

"(1) that wages surveyed be those paid by private employers in the local wage area for similar work performed by regular full-time employees;

"(2) for participation at all levels by representatives of employee organizations in every phase of providing an equitable system for fixing and adjusting the rates of pay for prevailing rate employees, including the planning of the surveys, the drafting of specifications, the selection of data collectors, the collection and the analysis of the data, and the submission of recommendations to the head of the lead agency for wage schedules and for special wage schedules where appropriate;

"(3) for requirements for the accomplishment of wage surveys and for the development of wage schedules;

"(4) (A) that a lead agency, in making a wage survey, shall determine whether there exists in the local wage area a sufficient number of comparable positions in private industry to establish wage schedules for the principal types of positions for which the survey is made, and that the determination shall be in writing and shall take into consideration all relevant evidence including evidence submitted by employee organizations recognized as representative of employees in the area; and

"(B) that, when it is determined that there is an insufficient number of comparable positions in private industry to establish the wage schedules, the lead agency shall establish the wage schedules on the basis of local private industry rates and rates paid for comparable positions in private industry in the nearest wage area that it determines to be most similar in the nature of its population, employment, manpower, and industry to the wage area for which the wage survey is being made

"(5) (A) that each grade of a wage schedule have 4 steps, the first step at 96 percent of the prevailing rate, the second step at 100 percent of the prevailing rate, the third step at 104 percent of the prevailing rate, and the fourth step at 108 percent of the prevailing rate, except that a special wage schedule under paragraph (6) of this subsection shall have not less than 4 steps;

"(B) that, with satisfactory work performance of an acceptable level of competence as determined by the head of the agency, an employee advance automatically to the next higher step within the grade at the beginning of the next pay period following the completion of—

"(i) 26 calendar weeks of continuous service in step 1;

"(ii) 78 calendar weeks of continuous service in step 2; and

"(iii) 104 calendar weeks of continuous service in step 3;

and

"(C) that the benefit of successive step increases is preserved for employees whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency;

"(6) for special rates and schedules including, but not limited to, supervisory schedules and industry oriented schedules, as appropriate;

"(7) for equal rates of pay for the same work in the same local wage area;

"(8) for pay distinctions in keeping with work distinctions, with proper differentials as determined by the Commission for duty involving unusually severe working conditions or unusually severe hazards;

"(9) rules governing the administration of pay for individual employees on appointment, transfer, promotion, demotion (including retention of pay rates as appropriate), and other similar changes in employment status; and

"(10) for a continuing program of systems maintenance and improvement designed to keep the prevailing rate system fully abreast of changing conditions, practices, and techniques both in and out of the Government of the United States.

"§ 5344. Effective date of wage increase; retroactive pay

"(a) Each increase in rates of basic pay granted, pursuant to a wage survey, to prevailing rate employees is effective not later than the first day of the first pay period which begins on or after the 45th day, excluding Saturdays and Sundays, following the date the wage survey is ordered to be made.

"(b) Retroactive pay is payable by reason of an increase in rates of basic pay referred to in subsection (a) of this section only when—

"(1) the individual is in the service of the Government of the United States, including service in the armed forces, or the government of the District of Columbia on the date of the issuance of the order granting the increase; or

"(2) the individual retired or died during the period beginning on the effective date of the increase and ending on the date of issuance of the order granting the increase, and only for services performed during that period.

For the purpose of this subsection, service in the armed forces includes the period provided by statute for the mandatory restoration of the individual to a position in or under the Government of the United States or the government of the District of Columbia after he is relieved from training and service in the armed forces or discharged from hospitalization following that training and service.

"(c) For purposes of determining the amount of insurance for which an individual is eligible under chapter 87 of this title, an increase in the rate of basic pay referred to in subsection (a) of this section is effective on the date of the issuance of the order granting the increase. However, for an employee who dies or retires during the period beginning on the effective date of the increase and ending on the date of the issuance of the order granting the increase, the amount of the insurance is determined as if the increase under this section were in effect for the employee during that period.

"§ 5345. Retained rate of pay on reduction in grade

"(a) Under regulations prescribed by the Civil Service Commission, and subject to the limitation in subsection (b) of this section, a prevailing rate employee—

"(1) who is reduced in grade from a grade of a wage schedule;

"(2) who holds a career or a career-conditional appointment in the competitive service, or an appointment of equivalent tenure in the excepted service or in the government of the District of Columbia;

"(3) whose reduction in grade is not (A) caused by a demotion for personal cause, (B) at his request, (C) effected in a reduction in force due to lack of funds or curtailment of work, or (D) with respect to a temporary promotion, a condition of the temporary promotion to a higher grade;

"(4) who, for 2 continuous years immediately before the reduction in grade, served (A) in the same agency, and (B) in a grade or grades higher than the grade to which demoted; and

"(5) whose work performance during the 2-year period is satisfactory or better;

is entitled to basic pay at the rate to which he was entitled immediately before the reduction in grade (including each increase in rate of basic pay granted pursuant to a wage survey) for a period of 2 years from the effective date of the reduction in grade, so long as he—

"(A) continues in the same agency without a break in service of 1 workday or more;

"(B) is not entitled to a higher rate of basic pay by operation of this subchapter; and

"(C) is not demoted or reassigned (i) for personal cause, (ii) at his request, or (iii) in a reduction in force due to a lack of funds or curtailment of work.

"(b) The rate of basic pay to which a prevailing rate employee is entitled under subsection (a) of this section with respect to each reduction in grade to which that subsection applies may not exceed the sum of—

"(1) the minimum rate of the grade to which he is reduced under each reduction in grade to which that subsection applies (including each increase in rate of basic pay granted pursuant to a wage survey); and

"(2) the difference between his rate immediately before the first reduction in grade to which that subsection applies (including each increase in rate of basic pay granted pursuant to a wage survey) and the minimum rate of that grade which is 3 grades lower than the grade from which he was reduced under the first of the reductions in grade (including each increase in the rate of basic pay granted pursuant to a wage survey).

"(c) Under regulations prescribed by the Commission consistent with the provisions of subsections (a) and (b) of this section, an employee who is reduced to a grade of a wage schedule from a position not subject to this subchapter is entitled to a retained rate of basic pay.

"(d) The Commission may prescribe regulations governing the retention of the rate of basic pay of an employee who together with his position is brought under this subchapter. If an employee so entitled to a retained rate under these regulations is later demoted to a position under this subchapter, his rate of basic pay is determined under subsections (a) and (b) of this section. For the purpose of those subsections, service in the position which was brought under this subchapter is deemed service under this subchapter.

“§ 5346. Job grading system

“(a) The Civil Service Commission, after consulting with the agencies and with employee organizations, shall establish and maintain a job grading system for positions to which this subchapter applies. In carrying out this subsection, the Commission shall—

“(1) establish and define individual occupations and the boundaries of each occupation;

“(2) establish job titles within occupations;

“(3) develop and publish job grading standards; and

“(4) provide a method to assure consistency in the application of job standards.

“(b) The Commission, from time to time, shall review such numbers of positions in each agency as will enable the Commission to determine whether the agency is placing positions in occupations and grades in conformance with or consistently with published job standards. When the Commission finds that a position is not placed in its proper occupation and grade in conformance with published standards or that a position for which there is no published standards is not placed in the occupation and grade consistently with published standards, it shall, after consultation with appropriate officials of the agency concerned, place the position in its appropriate occupation and grade and shall certify this action to the agency. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

“(c) On application, made in accordance with regulations prescribed by the Commission, by a prevailing rate employee for the review of the action of an employing agency in placing his position in an occupation and grade for pay purposes, the Commission shall—

“(1) ascertain currently the facts as to the duties, responsibilities, and qualification requirements of the position;

“(2) decide whether the position has been placed in the proper occupation and grade; and

“(3) approve, disapprove, or modify, in accordance with its decision, the action of the employing agency in placing the position in an occupation and grade.

The Commission shall certify to the agency concerned its action under paragraph (3) of this subsection. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

“§ 5347. Federal Prevailing Rate Advisory Committee

“(a) There is established a Federal Prevailing Rate Advisory Committee composed of—

“(1) the Chairman, who shall not hold any other position in the Government of the United States or the government of the District of Columbia, and who shall be appointed by the President for a 4-year term at a rate of pay equivalent to the maximum rate for the General Schedule;

“(2) the head, or his designee, of each of the 4 Executive agencies (other than the Civil Service Commission), and military departments designated by the Chairman of the Civil Service Commission from time to time as having the largest number of prevailing rate employees;

"(3) an employee of the Civil Service Commission, appointed by the Chairman of the Civil Service Commission; and

"(4) 5 representatives, appointed by the Chairman of the Civil Service Commission, from among the employee organizations representing, under exclusive recognition of the Government of the United States, the largest numbers of prevailing rate employees in the service of the Government of the United States.

"(b) In making appointments of representatives of employee organizations under subsection (a)(4) of this section, the Chairman of the Civil Service Commission shall appoint, as nearly as practicable, a number of representatives from a particular employee organization in the same proportion as the number of prevailing rate employees represented by such organization is to the total number of prevailing rate employees in the Government of the United States and the government of the District of Columbia. However, in any case there shall not be more than 2 representatives from any one employee organization nor more than 4 representatives from a single council, federation, alliance, association or affiliation of employee organizations.

"(c) Every second year the Chairman of the Civil Service Commission shall review employee organization representation to determine adequate or proportional representation under the guidelines of subsection (b) of this section.

"(d) The representatives from the employee organizations serve at the pleasure of the Chairman of the Civil Service Commission.

"(e) The Committee shall study the prevailing rate system and other matters pertinent to the establishment of prevailing rates under this subchapter and, from time to time, advise the Civil Service Commission thereon. Conclusions and recommendations of the Committee shall be formulated by majority vote. The Committee shall make an annual report to the Commission and the President for transmittal to Congress, including recommendations and other matters considered appropriate. Any member of the Committee may include in the annual report recommendations and other matters he considers appropriate

"(f) The Committee shall meet at the call of its Chairman. However, a special meeting shall be called by the Chairman if a majority of the members makes a written request to the Chairman to call a special meeting to consider matters within the purview of the Committee.

"(g) Members of the Committee (other than employee organization representatives and the Chairman) serve without additional pay. Employee organization members are not entitled to pay from the Government of the United States for services rendered to the Committee.

"(h) The Civil Service Commission shall provide such clerical and professional personnel as the Committee considers appropriate and necessary to carry out its functions under this subchapter. Such personnel shall be responsible solely to the Committee.

"§ 5348. Crews of vessels

"(a) Except as provided by subsection (b) of this section, the pay of officers and members of crews of vessels excepted from chapter 51 of this title by section 5102(c)(8) of this title shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry.

"(b) Vessel employees of the Panama Canal Company may be paid in accordance with the wage practices of the maritime industry."

(b) The analysis of subchapter IV of chapter 53 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER IV—PREVAILING RATE SYSTEMS

"5341. Policy.

"5342. Definitions; application.

"5343. Prevailing rate determinations; wage schedules.

"5344. Effective date of wage increase; retroactive pay.

"5345. Retained rate of pay on reduction in grade.

"5346. Job grading system.

"5347. Federal Prevailing Rate Advisory Committee.

"5348. Crews of vessels."

SEC. 2. Section 2105(c)(1) of title 5, United States Code, is amended by inserting "(other than subchapter IV of chapter 53 and section 7154 of this title)" immediately following "laws".

SEC. 3. Section 5337 of title 5, United States Code, is amended—

(1) by striking out the words "to which this section applies" wherever they appear in subsection (b) and inserting "to which that subsection applies" in place thereof; and

(2) by adding at the end thereof:

"(c) Under regulations prescribed by the Civil Service Commission consistent with the provisions of subsections (a) and (b) of this section, an employee who is reduced to a grade of the General Schedule from a position to which this subchapter does not apply is entitled to a retained rate of basic pay."

SEC. 4. Section 5541(2)(xi) of title 5, United States Code, is amended to read as follows:

"(xi) an employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of this title, or by a wage board or similar Administrative authority serving the same purpose, except as provided by section 5544 of this title;"

SEC. 5. The first sentence of section 5544(a) of title 5, United States Code, is amended to read as follows: "An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under section 5343 of this title, or by a wage board or similar administrative authority serving the same purpose, is entitled to overtime pay for overtime work in excess of 8 hours a day or 40 hours a week."

SEC. 6. Section 6101(a)(1) of title 5, United States Code, is amended by inserting "other than an employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under section 5343 of this title or by a wage board or similar administrative authority serving the same purpose" immediately preceding the period at the end thereof.

SEC. 7. (a) Section 6102 of title 5, United States Code, is repealed.

(b) The analysis of chapter 61 of title 5, United States Code, is amended by striking out—

"6102. Eight-hour day; 40-hour workweek; wage-board employees."

SEC. 8. Section 7154(b) of title 5, United States Code, is amended by striking out "subchapter III of chapter 53" and inserting "subchapters III and IV of chapter 53" in place thereof.

SEC. 9. (a) An employee's initial rate of pay on conversion to a wage schedule established pursuant to the amendments made by this Act shall

be determined under conversion rules prescribed by the Civil Service Commission. The amendments made by this Act shall not be construed to decrease the existing rate of basic pay of any present employee subject thereto.

(b) The amendments made by this Act shall not be construed to affect agreements presently in effect as a result of negotiations between departments and agencies of the Government of the United States, or subdivisions thereof, and organized employees. It is the intent of this Act that through negotiations between the Commission, the heads of those agencies referred to in clauses (i)-(viii) of section 5102(a)(1) of title 5, United States Code, and the organized employees, that, in due time, wherever feasible, all prevailing rate employees be covered by the amendments made by this Act.

SEC. 10. The provisions of sections 1-9 of this Act are effective on the first day of the first pay period which begins on or after 90 days after the date of enactment of this Act except that, in the case of those employees referred to in section 5342(a)(2) (C) and (D) of title 5, United States Code (as amended by the first section of this Act), such provisions are effective on the first day of the first pay period which begins on or after one hundred and eighty days after such date of enactment or on such earlier date (not earlier than ninety days after such date of enactment) as the Civil Service Commission may prescribe.

And the Senate agree to the same.

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MORRIS K. UDALL,
ROBERT J. CORBETT,

Managers on the Part of the House.

GALE W. MCGEE,
RALPH YARBOROUGH,
JENNINGS RANDOLPH,
H. L. FONG,
TED STEVENS,

Managers on the Part of the Senate

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 17809) to provide an equitable system for fixing and adjusting the rates of pay for prevailing rate employees of the Government, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The Senate struck out all of the House bill after the enacting clause and inserted a substitute text. The committee of conference recommends that the House recede from its disagreement to the amendment of the Senate with an amendment which is a substitute for both the House bill and the Senate amendment and that the Senate agree to the same.

Except for technical drafting changes, the differences between the House bill and the conference substitute are explained below.

DIFFERENCES BETWEEN THE TEXT OF THE HOUSE BILL AND THE CONFERENCE SUBSTITUTE

NONAPPROPRIATED FUND EMPLOYEES

The House bill, under section 5342(a)(2)(C), defines "prevailing rate employee" for purposes of this legislation to include "an employee of a nonappropriated fund instrumentality".

The conference substitute restricts the definition in this particular case to an employee of a nonappropriated fund instrumentality employed in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, or as a foreman or a supervisor in a position having trade, craft, or laboring experience and knowledge as the paramount requirement.

The broad definition in the House bill would require employees in executive, clerical, managerial, and merchandising positions to be paid under prevailing rate procedures which would be inconsistent with the practice ordinarily used in wage board systems. The executive and management employees have had their rates of pay based on rates comparable to the rates paid under the General Schedule. The conference substitute will permit the continuation of the existing practice and will apply the provisions of the bill only to employees under the trades, crafts, and labor occupations.

The House bill includes a specific requirement, in the second sentence of the new section 5343(a), that the pay of prevailing rate employees of nonappropriated fund instrumentalities located within the several States or the District of Columbia, and of the Veterans' Canteen Service, be fixed and adjusted in accordance with prevailing rates determined by a survey of wages paid to employees in a representa-

tive number of retail, wholesale, service, and recreational establishments in the local areas engaged in activities similar to those of the instrumentality or the Canteen Service.

The conference substitute omits the particular sentence involved but includes provisions in paragraph (6) of the new section 5343(c) of the conference substitute which authorizes special industry oriented schedules. It has been the practice under the wage board system to establish special industry oriented schedules for employees who perform printing and lithographing services, motion picture service, and officers and members of crews of vessels. Paragraph (6) of the conference substitute is intended to authorize the establishment of a special wage schedule for nonappropriated fund employees and, if appropriate, to permit such special schedule to be based on a special survey of rates paid to employees in retail, wholesale, service, and recreational establishments.

Also, the conference substitute, by omitting the reference to instrumentalities located within the several States or the District of Columbia, makes it clear that the provisions apply to United States citizen employees overseas.

WITHIN-GRADE STEPS

The House bill requires, under section 5343(c)(5), that the regulations to be issued by the Civil Service Commission provide that each grade of a wage schedule have 5 steps, the first step at 96 percent of the prevailing rate with graduated increases to 112 percent of the prevailing rate for the 5th step.

The conference agreement provides that each grade of a wage schedule have 4 steps except that special wage schedules established under paragraph (6) of the new section 5343(c) shall have not less than 4 steps. The language of the conference agreement removes any question that may exist against continuing the current practice under which special wage schedules for supervisors are established with 5 within-grade steps.

NIGHT DIFFERENTIALS

The House bill, under section 5343(c)(8) (B) and (C), provides for a nationwide uniform 7½ percent night differential for the three o'clock shift, and a 10 percent night differential for the eleven o'clock shift.

The conference agreement does not contain comparable provisions.

EFFECTIVE DATE

The House bill, under section 9(c), provides an effective date as the first day of the first pay period which begins on or after the one hundred and eightieth day after date of enactment, or on any earlier date that the Civil Service Commission may prescribe, which is at least ninety days after the date of enactment.

The conference agreement, under section 10, provides an effective date as the first day of the first pay period which begins on or after ninety days after the date of enactment except that it is one hundred and eighty days in the case of nonappropriated fund employees and Veterans' Canteen Service employees.

PREMIUM PAY

The House bill, under section 10, provides nonappropriated fund employees and Veterans' Canteen Service employees with a 25 percent additional premium pay for Sunday work, and double pay for holiday work.

The conference agreement does not contain comparable provisions

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